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09/612,607	07/07/2000	Daniel E Grupp	003771.P001D	9241
7590 02/03/2006			EXAMINER	
Tarek N Fahmi Blakely Sokoloff Taylor & Zafman LLP 12400 Wilshire Boulevard Seventh Floor Los Angeles, CA 90025-1026			PHAM, LONG	
			ART UNIT	PAPER NUMBER
			2814	
DATE MAILED: 02/03/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.



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**MAILED**  
FEB 03 2006  
**GROUP 2800**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/612,607

Filing Date: July 07, 2000

Appellant(s): GRUPP, DANIEL E

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Tarek N. Fahmi

For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/30/05 appealing from the Office action mailed 03/22/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No. 2002-0243.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 23, 24, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellenbogen (US patent 6,339,227).

With respect to claims 23 and 24, Ellenbogen teaches a method, comprising:

Forming a conduction path between a pair of tunnel junctions (see figs. 3A-3D and cols. 9 and 10), applying a voltage with an electrode capacitively coupled (see col. 9, line 51) to shift energy states of an island or molecule having a non-uniform density of such energy states (see fig. 3A), wherein separated conduction and valence bands that behave as continuous energy bands or a quasi-continuum

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of energy states, the island being disposed between the tunnel junctions (the middle part of fig. 3B is the island and the ends of fig. 3B are the junctions).

Further with respect to claim 24, junctions or barriers inherently have resistance less than or equal to a quantum resistance.

With respect to claim 25, a current is passed. See col. 9, line 57.

**(10) Response to Argument**

On page 3 of the Appeal Brief, the appellant argues that Ellenbogen device consists of a molecule having energy levels of which are discrete in nature or are not continuous as presently claimed.

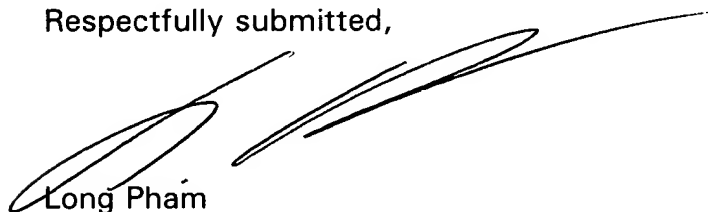
However, fig. 3D of Ellenbogen shows that energy level 125' and energy level 126' are at the same level or continuous.

**(11) Related Proceeding(s) Appendix**

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Long Pham

Conferees:

Wael Fahmy (SPE)

Darren Schuberg (SPE)

